

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 130 Section 130.101 Character and Rate of Tax</b>
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**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130  
RETAILERS' OCCUPATION TAX**

**SUBPART A: NATURE OF TAX**

**Section 130.101 Character and Rate of Tax**

The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed* (Section 2 of the Act). *"Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.* (Section 2-27 of the Act) The tax is measured by the seller's gross receipts from such sales made in the course of such business. (For further information concerning "Gross Receipts", see Subpart D of this Part.)

a)      **How to Determine Effective Rate**

- 1)      For the purposes of the Retailers' Occupation Tax Act, any tax liability incurred in respect to a sale of tangible personal property made in the regular course of business shall be computed by applying, to the gross receipts from such sale, the tax rate in effect as of the date of delivery of such property, provided that if delivery occurs after the tax rate changes, in a transaction in which receipts were received before the date of the rate change and tax was paid on such receipts when received by the seller in accordance with Section 130.430 of this Part at the rate which was in effect when the seller received such receipts, no additional tax will be due or credit allowed because of the delivery of the property occurring after the rate changes.

- 2) Furthermore, in the case of sales of building materials to real estate improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, identifying the construction contract in question by its date and by naming the contractor's construction work involved, and by giving the location on the job site where the construction contract is being performed or is to be performed.

b) Tax Rate in Effect

- 1) The effective rate from January 1, 1985, through December 31, 1989, is 5%. On and after January 1, 1990, the effective rate is 6.25%. *Beginning on July 1, 2000 through December 31, 2000, with respect to motor fuel and gasohol, the tax is imposed at the rate of 1.25%. (Section 2-10 of the Act)*

- 2) Definitions

- A) *"Diesel Fuel" is defined as any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark. [35 ILCS 505/2]*
- B) *"Gasohol" means motor fuel that is a blend of denatured ethanol and gasoline that contains no more than 1.25% water by weight. The blend must contain 90% gasoline and 10% denatured ethanol. A maximum of one percent error factor in the amount of denatured ethanol used in the blend is allowable to compensate for blending equipment variations. [35 ILCS 105/3-40]*
- C) *"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel". [35 ILCS 505/1.1]*
  - i) By way of illustration and not limitation, the following are considered motor fuel:

? Gasoline

- ? Diesel fuel
  - ? Combustible gases (e.g., liquified petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
  - ? Gasohol.
- ii) By way of illustration and not limitation, the following are not considered motor fuel:
- ? Avgas
  - ? Jet fuel
  - ? 1-K kerosene
  - ? Combustible gases unless delivered directly into the fuel supply tanks of motor vehicles
  - ? Heating oil (e.g., kerosene and fuel oil) unless delivered directly into the fuel supply tanks of motor vehicles, in which case it is considered diesel fuel.

D) *"Special Fuel" means all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A) of the Motor Fuel Tax Law or combustible gases as defined in Section 5, example (B) of the Motor Fuel Tax Law. "Special Fuel" includes diesel fuel. [35 ILCS 505/1.13]*

c) Effective Date of New Taxes

When something that has been exempted becomes taxable as to sales that are made on and after some particular date, the date of sale for this purpose shall be deemed to be the date of the delivery of the property. This is true even if such delivery is made under a contract that was entered into before the effective date of the new tax.

d) Relation of Retailers' Occupation Tax to Use Tax

The Retailers' Occupation Tax is an occupation tax whose legal incidence is on the seller, rather than on the purchaser. However, with the enactment of the Use Tax Act in 1955 [35 ILCS 105], the retailer became a tax collector under that Act and is required to comply with the bracket systems or tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users.

(Source: Amended at 29 Ill. Reg. 7004, effective April 26, 2005)